

BEFORE THE
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION III

Docket No. III-93-01-DC

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- 1.3 The Work shall be consistent with the National Oil and Hazardous Substances Pollution Contingency Plan, as amended ("NCP"), 40 C.F.R. Part 300, and CERCLA.
- 1.4 This Order is issued to the above captioned-Respondent ("Respondent").

II. STATEMENT OF PURPOSE

2. In issuing this Order, the objective of EPA is to protect the public health and welfare and the environment by ensuring that a proper removal response action, as defined in Section 101(23) of CERCLA, 42 U.S.C. § 9601(23), is conducted to abate, mitigate and/or eliminate the release or threat of release of hazardous substances at the Site (as hereinafter described) by properly identifying and disposing of the hazardous substances located there; and containing and preventing the migration of hazardous substances from the Site.

III. FINDINGS OF FACT

- 3.1 The Respondent, NVF Company ("NVF"), is a corporation organized and existing under the laws of the State of Delaware.
- 3.2 Since the early 1920's, NVF has manufactured composite materials and industrial laminates at its manufacturing plant ("the Plant") located at the corner of Mulberry and Lafayette Streets, Kennett Square, Pennsylvania. The Plant encompasses an area of 26.13 acres.
- 3.3 As a result of the manufacturing operations described in paragraph 3.2 above, releases and threats of releases of hazardous substances have occurred at and from the Plant.
- 3.4 The Site includes the Plant and three nearby topographical features: a drainage ditch immediately adjacent and parallel to the Plant ("the drainage ditch"); a low tract of marsh land leading from the Plant ("the swale"); and a portion of an unnamed tributary (from the tributary's juncture with the swale to its confluence with the West Branch of Red Clay Creek) ("the tributary") which flows southwesterly into the West Branch of the Red Clay Creek ("the WBRCC" or the "creek"). (Figure 1, attached hereto and incorporated into this Order, is a schematic of the Site).

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- 3.5 Tissue samples were collected from fish in the Red Clay Creek. This sampling took place upstream of Highway 15037, west of PA State Route 82, south of Kennett Square, PA. Analysis of these samples by the U.S. Fish and Wildlife Service on or about August 16, 1982, revealed the presence of polychlorinated biphenyls ("PCBs") in excess of the U.S. Food and Drug Administration's ("FDA") Action Level of two (2) parts per million ("ppm").
- 3.6 In January 1983, the Pennsylvania Department of Environmental Resources ("PADER") began collecting sediment and water samples from the area referenced in paragraph 3.5 above, at selected intervals in the creek. Samples collected below the confluence of the unnamed tributary and the West Branch of the Red Clay Creek were found to contain PCBs. Samples collected above the confluence did not show any levels of PCBs. Based on this information, NVF was determined to be a source of this PCB contamination.
- 3.7 On or about May 9, 1983, PADER inspected NVF and found PCBs in the non-contact cooling water of outfall 001 and in the sediment of the swale which extends in a southerly direction to the tributary and the WBRCC. Based upon analyses performed by its consultant, E.H. Richardson Associates, Inc., NVF determined that the source of the PCB contamination in outfall 001 was residue from Respondent's No. 7 Press Pit ("Press Pit"). During the 1960's the Respondent used a heat transfer fluid containing PCBs in a piece of machinery located in the Press Pit.
- 3.8 In December of 1983, surface residues including sludges and debris were removed from the Press Pit. Despite this surface cleaning, PCB contamination remains in the swale and the tributary.
- 3.9 In accordance with the NCP, a Site assessment was performed by the EPA Region III Field Investigation Team ("FIT") on or about February 12, 1986. Sampling conducted at that time documented the presence of PCBs in the swale sediment in concentrations ranging from 44 ppm to 11,000 ppm.
- 3.10 On or about June 12, 1987, EPA entered into an Administrative Consent Order ("ACO") with NVF which required NVF to perform sampling in the Press Pit and at various other locations at and around the Plant, including at the storm water control basin and the electrical substations.
- 3.11 On or about August 30, 1987, NVF submitted a report detailing the actions it took as required by the ACO. The report documented levels of PCBs of up to 1,900 ppm imbedded in the concrete foundation of the Press Pit. A PCB level of 6,800 ppm was found in a scrape sample of a pipe leading

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from the Press Pit into an adjacent sump. The report also documented levels of PCBs ranging from 4 ppm to 590 ppm found at, or around, the thirteen (13) electrical substations at the Plant, while sediment samples taken from the storm water control basin revealed levels of PCBs ranging from 7-28 ppm.

- 3.12 Sampling performed by EPA's Field Investigation Team on or about May 26, 1987 revealed levels of PCBs ranging from 30.4 ppm to 59.3 ppm in the soils and sediments at NVF's former outfall 001.
- 3.13 On or about October 19, 1987, an EPA On-Scene Coordinator ("OSC") met with representatives of NVF on-site. Based upon the NVF report discussed in paragraph 3.11, above, and other sampling analyses, the OSC notified NVF of its potential CERCLA liability and gave NVF the opportunity to clean up contaminated soils and sediments along the railroad tracks between old and new outfalls 001, the swale, and the unnamed tributary. NVF was given until the close of business on October 20, 1987 to respond to the OSC's request to the company to perform the cleanup.
- 3.14 NVF did not respond timely to the OSC's offer.
- 3.15 On March 31, 1988, EPA issued a Unilateral Administrative Order ("March 1988 Order") to NVF requiring the company to: conduct sediment/soil sampling in the tributary; investigate PCB concentrations in the swale and drainage ditch; and remove sediments and soils where sampling revealed concentrations of PCBs in excess of 50 (ppm).
- 3.16 In response to the March 1988 Order, NVF submitted a workplan detailing sampling and remediation activities for the Site. Sampling conducted by NVF detected levels below 50 ppm in the tributary and above 50 ppm in the swale and the drainage ditch. Subsequently, NVF excavated approximately 380 cubic yards of soils from the swale and tributary, and 70 cubic yards of soil from the drainage ditch.
- 3.17 While excavating the drainage ditch, NVF discovered that PCB contamination existed at far greater levels than previously anticipated (the "new contamination information"). Upon making this discovery, NVF installed engineering controls to reduce or prevent recontamination of the down-stream swale. In September of 1988, NVF concluded that it had complied with the terms of the March 1988 Order, and the company submitted to EPA a final report on the matter.
- 3.18 In light of the new contamination information, in October 1988, EPA requested that NVF perform additional

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investigation in the PCB area of the drainage ditch to determine the full extent of contamination in the area. NVF subsequently collected surface samples, installed boreholes and installed a monitoring well in an effort to characterize the extent of this contamination.

- 3.19 The results of the investigation described in paragraph 3.18 above indicated that surface contamination above 50 ppm for PCBs was present in the drainage ditch. This contamination extends along almost the entire 400 foot length of the ditch, while lateral and vertical contamination is primarily located toward the western end of the ditch at levels as high as 4,000 ppm at a depth of approximately 8-10 feet.
- 3.20 Upon determining the extent of contamination, NVF considered various options and subsequently proposed to construct a cap to contain the PCB contaminated soils and to provide for long-term maintenance of the cap.
- 3.21 EPA, NVF, and PADER met in January of 1989 to discuss NVF's proposal and to evaluate the applicability of the NVF plan to the Site contamination problem.
- 3.22 EPA, NVF and PADER met again in January of 1990 to discuss NVF's cleanup proposals.
- 3.23 Despite the meetings described in paragraphs 3.21 and 3.22 above, NVF has failed to date, to conduct the appropriate PCB response action at the Site.
- 3.24 Polychlorinated biphenyls (PCBs) are "hazardous substances" within the meaning of Sections 101(14) and 102 of CERCLA, 42 U.S.C. §§ 9601(14) and 9602, because they are listed at 40 C.F.R. Part 302, Table 302.4.
- 3.25 PCBs have been found to be carcinogenic in experimental studies with test animals and are a suspected carcinogen in humans. PCBs are toxic to aquatic life.
- 3.26 Based on the information described above, on November 27, 1987, the Regional Administrator determined that a threat to public health, welfare or the environment exists at the Site due to the actual release of PCBs from the NVF Site into the surrounding environment. Further, on November 3, 1992, the Regional Administrator again determined that a threat to public health, welfare and the environment still exists at the Site due to the continued release of PCBs from the Site into the environment.

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IV. CONCLUSIONS OF LAW

- 4.1 The NVF Site is a "facility" as defined by Section 101(9) of CERCLA, 42 U.S.C. § 9601(9).
- 4.2 The Respondent is a "person" as defined by Section 101(21) of CERCLA, 42 U.S.C. § 9601(21).
- 4.3 "Hazardous Substance(s)," as defined in Section 101(14) of CERCLA, 42 U.S.C. § 9601(14), have been disposed of at the NVF Site and are currently present there.
- 4.4 The presence of hazardous substances at the Site and the past, present, and/or potential migration of hazardous substances at and from the Site constitutes an actual and/or threatened "release" as defined in Section 101(22) of CERCLA, 42 U.S.C. § 9601(22).
- 4.5 The Respondent is an owner/operator of a "facility" within the meaning of Section 107(a) of CERCLA, 42 U.S.C. § 9607(a).
- 4.6 Respondent is a responsible party under Section 107 of CERCLA, 42 U.S.C. § 9607(a).

V. DETERMINATIONS

Based on the Findings of Fact and Conclusions of Law set forth above, and the Administrative Record supporting this Order, EPA has determined that:

- 5.1 The actual and/or threatened release of hazardous substances from the Site may present an imminent and substantial endangerment to the public health or welfare or the environment.
- 5.2 The Work is necessary to protect the public health and welfare and the environment.
- 5.3 Because there is a threat to public health or welfare or the environment, a removal action is appropriate to abate, minimize, stabilize, mitigate or eliminate the release or threat of release of hazardous substances at or from the Site.

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VI. PARTIES BOUND

- 6.1 This Order shall apply to and be binding upon Respondent and its agents, successors, and assigns. Neither a change in ownership or corporate or partnership status of the Respondent, nor a change in ownership or control of the Site shall in any way alter Respondent's responsibilities under this Order.
- 6.2 No change in ownership of any property covered by this Order shall in any way alter, diminish, or otherwise affect Respondent's obligations and responsibilities under this Order.
- 6.3 The Respondent shall provide a copy of this Order to all contractors, subcontractors, supervisory personnel, laboratories and consultants retained by Respondent to conduct any portion of the work to be performed by Respondent pursuant to this Order. Respondent shall require in any and all contracts related to this Site that the work that is the subject of such contract be performed within the time and in the manner set forth in this Order.

VII. NOTICE TO THE STATE

7. Notice of issuance of this Order has been given to the Commonwealth of Pennsylvania, pursuant to Section 106(a) of CERCLA, 42 U.S.C. § 9606(a).

**VIII. RESPONSE ACTION PLAN
DEVELOPMENT AND IMPLEMENTATION**

- 8.1 Respondent shall commence and complete performance of the following Work within the time periods specified herein.
- 8.2 Within five (5) business days of the effective date of this Order, Respondent shall notify EPA in writing of the identity and qualifications of the contractor, subcontractor, supervisory personnel, and other persons who will be primarily responsible for developing the Response Action Plan ["RAP"] required by this Section. Respondent shall further notify EPA in writing of the identity and qualifications of all contractors, subcontractors, supervisory personnel, and other persons who will conduct all or any portion of the Work no less than five days prior to commencement of the Work to be performed by such persons.

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All contractors, subcontractors, supervisory personnel and/or other persons retained to perform Work shall meet the applicable Occupational Safety and Health Administration ("OSHA") requirements as defined in 29 C.F.R. § 1910.120. The selection of all contractors, subcontractors, supervisory personnel, and other persons who will perform Work; the Respondent's Project Coordinator designated pursuant to Section IX; and any replacements to any such persons are subject to disapproval by EPA at any time. In the event of any such disapproval by EPA, Respondent shall notify EPA within five (5) calendar days of receipt of such EPA disapproval of the Respondent's selection of the person(s) who will replace the one(s) disapproved by EPA. Persons whose selections were disapproved by EPA shall not perform any of the Work for which their selections were disapproved.

8.3 Respondent shall accomplish the following items:

- a. Provide site security sufficient to preclude access by unauthorized persons during the conduct of the work;
- b. Provide Site-specific health and safety measures, including preparation and implementation of a Health and Safety Plan ("HASP"), for Site activities required by this Order to protect the health and safety of workers, other personnel and the public from the hazardous substances and work-related health and safety hazards during performance of the Work specified herein. The HASP shall, as appropriate, provide for proper decontamination of personnel and equipment, monitoring and control of off-site migration of hazardous substances from the Site and protection of public health from overexposure to hazardous substances during the conduct of activities at the Site pursuant to this Order. Applicable sections of the HASP shall be at least as stringent as the Occupational Safety and Health Administration and EPA requirements including, but not limited to 29 C.F.R. § 1910.120. The HASP shall be submitted at the time that a Removal Action Alternative(s) Plan described in paragraphs 8.3(d) and 8.4 below is submitted;
- c. Obtain a Hazardous Waste Generator Identification Number, if appropriate;
- d. Within thirty (30) business days of the effective date of this Order, Respondent shall submit to EPA for approval a "Removal Action Alternative(s) Plan" (the "RAP") detailing the alternative means for removing and disposing of PCB-contaminated soils, sediments and debris from the drainage ditch to a level of no greater

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than 10 parts per million. The RAP shall be consistent with the NCP and shall be subject to approval by EPA according to the provisions of paragraphs 8.4, 8.5 and 8.9 below. The following are the minimum items that are to be detailed in the RAP:

1. An Excavation Work Plan which provides a detailed plan for the excavation and disposal of PCB-contaminated soils, sediments and debris from the drainage ditch;
 2. A report to the EPA which evaluates a variety of engineering controls to prevent migration of PCB contaminated soils or sediments from the swale and the tributary into the creek (the "Swale/Tributary PCB Report"). The Respondent shall evaluate existing information and collect any additional information required to develop these engineering controls; and
 3. The Swale/Tributary PCB Report shall contain detailed descriptions of response alternatives to prevent the migration described in 8.3(d)(2) above. Respondent shall also propose a response alternative and a schedule for the expeditious implementation of its recommended alternative. The Excavation Work Plan and the Swale/Tributary PCB Report shall describe the measures to be undertaken to identify, segregate and dispose of materials at the Site in a manner which includes measures that will destroy contaminants and/or prevent the spread of pollution to the maximum extent practicable. The Excavation Work Plan and the Swale/Tributary Report shall be subject to approval by EPA according to the provisions of paragraphs 8.4, 8.5 and 8.9 below.
- 8.4 EPA will review the RAP and notify the Respondent of EPA's approval or disapproval of it. In the event of disapproval, EPA will specify the deficiencies in writing. The Respondent shall respond to and correct the deficiencies identified by EPA and resubmit the RAP to EPA within five (5) business days of receipt of EPA disapproval. Approval, disapproval and/or modification by EPA of the subsequent RAP submission shall be according to the provisions of Paragraph 8.9 below. Approval of the RAP shall not limit EPA's authority under the terms of this Order to require Respondent to conduct activities under this Order to accomplish work outlined in paragraph 8.3 of this Order.
- 8.5 Notwithstanding any other provision of this Order, EPA reserves the right to comment on, modify and direct changes

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in the plan for the drainage ditch and/or the response alternatives proposed by Respondent for the Swale/Tributary PCB Report. If EPA disapproves of or requires revisions to Respondent's proposed plan for the drainage ditch and/or the recommended alternatives for the swale or the tributary in whole or in part, Respondent shall amend and submit to EPA revisions which fully address EPA's comments, within 5 days of receiving EPA's comments.

- 8.6 The Respondent shall implement the EPA-approved plan for the drainage ditch and the EPA-approved response alternatives for the swale and the tributary. Within five (5) business days of receipt from EPA of written approval to proceed with implementation of an EPA-approved response alternative(s) for each of the following: drainage ditch, swale and tributary (the "approved responses"), the Respondent shall begin implementation of such approved response(s) in accordance with the EPA-approved RAP and the schedules therein. In the event EPA determines that any work performed is deficient, and EPA requires Respondent to correct or re-perform such work pursuant to this Order, Respondent shall correct or re-perform such work in accordance with a schedule provided by EPA.
- 8.7 Beginning seven (7) calendar days after the date of and receipt of EPA approval of the RAP and continuing every seven calendar days thereafter, or such longer interval as may be determined in writing by the EPA Project Coordinator designated pursuant to Section IX, and until EPA advises Respondent that the Work is complete, the Respondent shall provide EPA with a progress report for each preceding seven day period. The progress reports shall include, at a minimum: 1) a description of the Work completed and the actions that have been taken toward achieving compliance with this Order; 2) a description of all data anticipated and activities scheduled for the next 7 calendar days; 3) a description of any problems encountered or anticipated; 4) any actions taken to prevent or mitigate such problems; 5) a schedule for when such actions will be completed; 6) copies of all analytical data received during the reporting period; and 7) all modifications to the Work, RAP, and schedule made in accordance with Section XV of this Order during the reporting period. In addition, Respondent shall provide to EPA, as appropriate, monthly reports on analytical services pursuant to OSWER Directive No. 9240.0-2B, "Extending the Tracking of Analytical Services to Potentially Responsible Party-Lead Superfund Sites", (July 6, 1992).
- 8.8 Documents, including plans, reports, sampling results and other correspondence to be submitted pursuant to this Order shall be sent certified or express mail to the EPA Project Coordinator, designated pursuant to Paragraph 9.2.

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- 8.9 All reports, plans, specifications, schedules and attachments required by this Order are subject to EPA approval and shall be incorporated into this Order upon approval by EPA. In the event of conflict between this Order and any document attached, incorporated in or enforceable hereunder, the provisions of this Order shall control. In the event that EPA disapproves any required submission, EPA will specify the deficiencies in writing. Within five (5) business days of receipt of EPA disapproval, Respondent shall amend and submit to EPA a revised submission that responds to and corrects the specified deficiencies. In the event of disapproval of any submission, EPA may submit its own modifications to the Respondent, in which case the Respondent is hereby required to implement such modifications. Any non-compliance with such EPA-approved reports, plans, specifications, schedules, attachments, or submission of deficient revisions following EPA disapproval, or non-compliance with EPA required modifications in the case of subsequent disapprovals as specified in this paragraph shall be considered a failure to comply with a requirement of this Order. Determination(s) of non-compliance will be made by EPA.
- 8.10 In addition to the reports required by this Order, Respondent shall provide to EPA, upon written request, any and all information and documents in its possession, custody or control resulting from and/or pertaining to Work performed by Respondent including, but not limited to, analytical data (including raw data), Site safety data, Site monitoring data, operational logs, copies of all hazardous waste manifests (including copies of all hazardous waste manifests signed upon receipt of the hazardous wastes by a licensed treatment, storage or disposal facility), the identity of treatment, storage and/or disposal facilities used, the identity of transporters used, the identity of any contractors and subcontractors used, the identity of any contractors supervisory personnel used information and documents concerning Respondent's compliance with Quality Assurance and Quality Control requirements of this Order, information and documents relating to Respondent's efforts to secure access, and information and documents relating to any project delays. Nothing herein shall be interpreted as limiting the inspection and information-gathering authority of EPA under Federal law.
- 8.11 Within twenty (20) calendar days of the date Respondent concludes it has completed implementation of the EPA-approved responses, Respondent shall submit a written report to EPA so notifying EPA. The written report shall detail the work undertaken to implement the EPA-approved responses of this Order and shall be certified by Respondent in accordance with the terms of paragraph 18.1(b), below. EPA

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will review the adequacy of both Respondent's implementation of the EPA-approved responses for the drainage ditch, swale and tributary and Respondent's accomplishment of work items specified in paragraph 8.3 above. EPA will notify Respondent, in writing, of any deficiencies and the actions required to correct such deficiencies. Respondent shall develop an additional plan or amend the existing RAP to address such deficiencies and Respondent shall perform such corrective actions in a manner consistent with the NCP and all applicable Federal laws and regulations. Any additional plan or amendment to the RAP will be subject to the approval procedures outlined in paragraphs 8.4, 8.5 and 8.9 above.

- 8.12 Respondent shall not handle or remove any hazardous substances from the Site except in conformance with the terms of this Order and all applicable Federal, State and local laws or regulations, as required by the NCP. Any hazardous substances, pollutants or contaminants transferred for disposal off-site as a result of this Order must be taken to a facility acceptable under EPA's Off-Site Policy (OSWER Directive No. 9834.11 (November 13, 1987)) in accordance with Section 121(d)(3) of CERCLA, 42 U.S.C. Section 9621(d)(3).
- 8.13 Respondent shall not commence any Work except in conformance with the terms of this Order. Respondent shall not commence implementation of any recommended selected response developed hereunder until receiving written EPA approval to proceed.
- 8.14 Respondent shall immediately notify EPA's Project Coordinator and the National Response Center [(800) 424-8802] and any other party required by law in the event of any action or occurrence during the pendency of this Order, which causes or threatens to cause an additional release of hazardous substances, pollutants or contaminants on, at, or from the Site, or which may create a danger to public health, welfare or the environment.
- 8.15 In the event that EPA believes that response actions or other current activities at the Site by the Respondent are causing or may cause a release or potential release of hazardous substances, or are a threat to public health or welfare or to the environment, EPA may, at its discretion, immediately halt or modify such response actions or other activities to eliminate or mitigate such actual or potential release or threat.

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IX. DESIGNATED PROJECT COORDINATORS

- 9.1 Respondent shall designate a Project Coordinator and shall notify EPA of its designated Project Coordinator no later than four (4) business days after the effective date of this Order. Designation of a Project Coordinator shall not relieve Respondent of its obligations to comply with all requirements of this Order. The Respondent's Project Coordinator shall be a technical and/or managerial representative of the Respondent and may be a contractor and/or consultant, provided, however, the Respondent's Project Coordinator shall not be its legal representative in this matter. The Project Coordinator for EPA designated pursuant to this Section and the Project Coordinator for the Respondent shall be responsible for overseeing the Work. To the maximum extent possible, communications between the Respondent and EPA and all documents concerning the activities performed pursuant to the terms and conditions of this Order, including plans, reports, approvals, and other correspondence, shall be directed to the Project Coordinators.
- 9.2 The Project Coordinator for EPA is:
- Harry T. Daw
On-Scene Coordinator
U.S. Environmental Protection Agency
Removal Enforcement Section (3HW33)
841 Chestnut Building
Philadelphia, PA 19107
(215) 597-6678
- 9.3 Respondent shall have the right to change its Project Coordinator. Such a change shall be accomplished by notifying the EPA Project Coordinator in writing at least five (5) calendar days prior to the change.
- 9.4 EPA shall have the right to change its Project Coordinator at any time without prior notice to Respondent. EPA's intent is to notify the Respondent as soon as practicable following any such change of its Project Coordinator.
- 9.5 The absence of the EPA Project Coordinator from the Site shall not be cause for the stoppage or delay of Work except when such stoppage or delay is specifically required by EPA.
- 9.6 The EPA Project Coordinator shall have the authority to halt or modify Work or other activities performed by Respondent at the Site to eliminate a release or threat of release of hazardous substances. Such direction by the EPA Project

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Coordinator may be given verbally or in writing. If such direction is given verbally, the EPA Project Coordinator will later memorialize such direction in writing.

X. QUALITY ASSURANCE

- 10.1 The Respondent shall use quality assurance, quality control, and chain of custody procedures in accordance with the "EPA NEIC Policies and Procedures Manual" dated May 1978, revised November 1984, EPA Document 330/9-78-001-R and "Interim Guidelines and Specifications for Preparing Quality Assurance Project Plans," December 1980, QAMS-005/80, and "QA/QC Guidance for Removal Activities," April 1990, EPA/540/G-90/004, while conducting all sample collection and analysis activities required by this Order. The Respondent shall consult with EPA in planning for, and prior to, all sampling and analysis required by the approved RAP. The Respondent shall use a laboratory(ies) which has a documented Quality Assurance Program that complies with EPA guidance document QAMS-005/80.

XI. SITE ACCESS

- 11.1 As of the effective date of this Order, Respondent shall provide to EPA and its employees, agents, consultants, contractors, and other authorized and/or designated representatives, for the purposes of conducting and/or overseeing the Work, access to all property owned or controlled by Respondent wherein Work must be undertaken. Such access shall permit EPA and its employees, agents, consultants, contractors, and other authorized and designated representatives to conduct all activities described in paragraph 11.3 of this Order.
- 11.2 To the extent that property wherein Work must be undertaken is presently owned or controlled by parties other than the Respondent, the Respondent shall use its best efforts to obtain Site access agreements from the present owners. Such access agreements shall be finalized as soon as practicable but no later than five (5) calendar days after receiving EPA's written notice to proceed. Such agreements shall provide reasonable access for Respondent and its employees, agents, consultants, contractors and other authorized and designated representatives to conduct the Work, and for EPA and its designated representatives to conduct the activities outlined in paragraph 11.3 below. In the event that any property owner refuses to provide such access or access

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agreements are not obtained within the time designated above, whichever occurs sooner, the Respondent shall notify EPA at that time, in writing, of all efforts to obtain access and the circumstances of the failure to obtain such access. EPA may then take steps to provide such access. Respondent shall reimburse the United States for all costs incurred in obtaining access which are not inconsistent with the NCP. "Best efforts" shall include agreement to reasonable conditions for access and/or the payment of reasonable fees."

- 11.3 EPA and its employees, agents, contractors, consultants and its other authorized and designated representatives shall have the authority to enter and freely move about the location where the response actions and/or work is being performed at all reasonable times for the purpose of, inter alia: inspecting Work, inspecting records, operating logs, and contracts related to the Site; reviewing the progress of the Respondent in carrying out the terms of this Order; conducting such tests as EPA deems necessary; using a camera, sound recording or other documentary type equipment; and verifying the data submitted to EPA by the Respondent. The Respondent shall permit such persons to inspect and copy all records, files, photographs, documents, and other writings, including all sampling and monitoring data, in any way pertaining to the Work.
- 11.4 Respondent may make a claim of business confidentiality for information submitted pursuant to this Order in the manner described in 40 C.F.R. § 2.203(b). Such an assertion shall be adequately substantiated in accordance with 40 C.F.R. § 2.203(e)(4) at the time the assertion is made. Information subject to a confidentiality claim shall be made available to the public by EPA only in accordance with the procedures set forth in 40 C.F.R. Part 2, Subpart B. If no such claim of business confidentiality accompanies the information when it is submitted or made available to EPA, it may be made available to the public by EPA without further notice to Respondent.
- 11.5 The Respondent may withhold those records and documents covered by any privilege or protection under federal law applied by federal courts in actions commenced by the United States. In the event that the Respondent withholds a document as privileged, the Respondent shall provide EPA with the title of the document, the date of the document, the name(s) of the author(s), and addressee(s)/recipient(s), a description of the nature of the document, and identification of the privilege asserted.
- 11.6 No such claim of confidentiality or privilege shall be made to any data required to be submitted pursuant to this Order,

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including, but not limited to sampling, analytical, monitoring, hydrogeologic, scientific, chemical or engineering data, or documents or information evidencing conditions at or around the Site, such as weekly reports, the final report, and record review information. Nor shall such claims be made for analytical data, Site safety data, Site monitoring data, operational logs, hazardous waste manifests, identities of treatment, storage and/or storage facilities used, identities of transporters used, identities of any contractors or subcontractors used which information is required to be submitted pursuant to this Order.

- 11.7 Notwithstanding any provision of this Order, EPA retains all of its access and information-gathering authorities and rights under CERCLA and any other applicable statute and regulation.

XII. RESERVATION OF RIGHTS

- 12.1 Except as expressly provided in this Order, EPA reserves all rights, claims, interests and defenses it may otherwise have, and nothing herein shall prevent EPA from seeking legal or equitable relief to enforce the terms of this Order, including the right to seek injunctive relief and/or the imposition of statutory penalties.
- 12.2 As provided by this Order, EPA expressly reserves its right to disapprove of Work performed by Respondent; to halt Work being performed by Respondent if Respondent has not complied with an approved RAP or this Order, or at any time EPA deems necessary to protect public health, welfare or the environment and to perform such Work; to request or require that Respondent perform response actions in addition to those required by this Order. In the event that EPA requires Respondent, and Respondent declines, to correct and/or reperform work that has been disapproved by EPA and/or to perform response actions in addition to those required by this Order, EPA reserves the right to undertake such actions and seek reimbursement of the costs incurred, and/or to seek any other appropriate relief. In addition, EPA reserves the right to undertake removal and/or remedial actions at any time that such actions are appropriate under the NCP and to seek reimbursement for any costs incurred, and/or take any other action authorized by law.
- 12.3 EPA reserves the right to bring an action against the Respondent for recovery of all oversight and other response costs incurred by the United States related to this Order which are not reimbursed by the Respondent, as well as any

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other costs incurred by the United States in connection with response actions conducted pursuant to CERCLA at the Site.

- 12.4 This Order concerns certain response actions (Work described in Section VIII, above) regarding the Site. Such response actions might not fully address all contamination at the Site. Subsequent response actions which may be deemed necessary by EPA are not addressed by this Order. EPA reserves all rights including, without limitation, the right to institute legal action against Respondent and/or any other parties, in connection with the performance of any response actions not addressed by this Order.
- 12.5 EPA reserves the right to take enforcement actions, including actions for monetary penalties, for any violation of law, regulation, or of this Order. Failure to comply with this Order subjects Respondent to the assessment of civil penalties of up to \$25,000 per day and/or punitive damages in an amount up to three times the amount of any costs incurred by the United States as a result of such failure pursuant to Sections 106(b) and 107(c) of CERCLA, 42 U.S.C. §§ 9606(b) and 9607(c). EPA may also undertake such other actions as it may deem necessary or appropriate for any purpose including, but not limited to, actions pursuant to Sections 104 and/or 106 of CERCLA, 42 U.S.C. §§ 9604 and 9606.
- 12.6 Nothing in this Order shall limit the authority of the On-Scene Coordinator as outlined in the NCP and CERCLA.

XIII. OTHER CLAIMS

- 13.1 Nothing in this Order shall constitute or be construed as a release of Respondent from any claim, cause of action or demand in law or equity against any person, firm, partnership, or corporation not bound by this Order for any liability Respondent may have arising out of or relating in any way to the generation, storage, treatment, handling, transportation, release, or disposal of any hazardous substances, hazardous wastes, pollutants, or contaminants found at, taken to, or taken from the Site.
- 13.2 This Order does not constitute any decision on preauthorization of funds under Section 111(a)(2) of CERCLA, 42 U.S.C. § 9611(a)(2).
- 13.3 Neither EPA nor the United States, by issuance of this Order, assumes any liability for any acts or omissions by Respondent, or Respondent's employees, agents, contractors,

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or consultants engaged to carry out any action or activity pursuant to this Order, nor shall EPA or the United States be held as a party to any contract entered into by Respondent or by Respondent's employees, agents, contractors, or consultants engaged to carry out the requirements of this Order.

- 13.4 Nothing herein shall constitute or be construed as a satisfaction or release from liability of Respondent or any other person.

XIV. OTHER APPLICABLE LAWS

14. All Work shall be undertaken in accordance with the requirements of all applicable local, State, and Federal laws and regulations, as required by the NCP.

XV. EFFECTIVE DATE AND SUBSEQUENT MODIFICATION

- 15.1 The effective date of this Order shall be three (3) business days after it is signed by EPA.
- 15.2 This Order may be modified or amended by EPA. Such amendments shall be in writing and shall have as their effective date the date on which such amendments are signed by EPA. Modifications to the EPA-approved RAP and its implementation may be made by the EPA Project Coordinator. Such modifications shall be memorialized in writing by the Project Coordinator.
- 15.3 Any reports, plans, specifications, schedules, or other submissions required by this Order are, upon approval by EPA, incorporated into this Order. Any non-compliance with such EPA-approved reports, plans, specifications, schedules, or other submissions shall be considered non-compliance with the requirements of this Order. Determinations of non-compliance will be made by EPA.
- 15.4 No informal advice, guidance, suggestions or comments by EPA regarding reports, plans, specifications, schedules, or other submissions by the Respondent or the requirements of this Order will be construed as relieving the Respondent of its obligation to obtain formal approval when required by this Order, and to comply with the requirements of this Order unless formally modified.

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XVI. LIABILITY OF THE UNITED STATES GOVERNMENT

16. Neither the United States Government nor any agency thereof shall be liable for any injuries or damages to persons or property resulting from acts or omissions of Respondent, or of its employees, agents, servants, receivers, successors, or assigns, or of any persons, including, but not limited to firms, corporations, subsidiaries, contractors, or consultants, in carrying out the Work, nor shall the United States Government or any agency thereof be held out as a party to any contract entered into by Respondent in carrying out the Work.

XVII. FAILURE TO PERFORM/PERFORMANCE EVENTS

- 17.1 In the event of an inability or anticipated inability on the part of Respondent to perform any of the actions or Work required by this Order in the time and manner required herein, the Respondent's Project Coordinator shall notify EPA orally as soon as possible but no later than within twenty-four (24) hours of such event (or, if the event occurs on a Friday or Saturday, no later than the following Monday) and in writing no later than seven (7) calendar days after Respondent becomes aware or should have become aware of such delay or anticipated delay. Such written notification shall be certified by a Responsible Official of Respondent in accordance with Section XVIII of this Order and shall describe fully the nature of the delay, including how it may affect the Work, RAP and schedule; the actions that will be or have been taken to mitigate, prevent, and/or minimize further delay; and the timetable according to which future actions to mitigate, prevent and/or minimize the delay will be taken. Such notification shall not relieve Respondent of any obligation of this Order. The Respondent shall adopt all reasonable measures to avoid and minimize such delay.
- 17.2 Failure by Respondent to carry out any requirement of this Order in accordance with the terms and conditions specified herein may result in the unilateral performance of the required actions by EPA pursuant to applicable authorities, an action to recover treble damages pursuant to CERCLA, and/or the initiation of an enforcement action against Respondent to require Respondent to perform such actions, in addition to any other relief that may be available to EPA pursuant to applicable law.

- 17.3 Nothing in this paragraph or any other provision of this Order shall be construed so as to limit any powers EPA may have under CERCLA, the NCP, or any other law or regulation.

XVIII. CERTIFICATION OF COMPLIANCE

- 18.1 (a) Unless otherwise required by the terms of this Order, any notice, report, certification, data presentation, or other document submitted by Respondent under or pursuant to this Order, which discusses, describes, demonstrates, or supports any finding or makes any representation concerning Respondent's compliance or non-compliance with any requirement(s) of this Order shall be certified by either a responsible official of the Respondent or by the Project Coordinator for the Respondent. The term "responsible official" means: (a) a president, secretary, treasurer or vice-president of the corporation in charge of a principal business function, or any other person who performs similar policy- or decision-making functions for the corporation, or (b) the manager of one or more manufacturing facilities employing more than 250 persons or having gross annual sales or expenditures exceeding \$35 million (in 1987 dollars when the consumer price index was 345.3), if authority to sign documents has been assigned or delegated to the manager in accordance with corporate procedures. The responsible official of a partnership or sole proprietorship means the general partner or the proprietor, respectively.
- (b) The written report required by paragraph 8.11 of this Order, and any delay described in paragraph 17.1 of this Order, shall be certified by a responsible official of Respondent.
- 18.2 The certification required by paragraph 18.1 of this Order shall be in the following form:

"Except as provided below, I certify that the information contained in or accompanying this (type of submission) is true, accurate, and complete. As to (the/those) portion(s) of this (type of submission) for which I cannot personally verify (its/their) accuracy, I certify under the penalty of law that this (type of submission) and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted

is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

Signature: _____
Name(print): _____
Title: _____

- 18.3 Submission of documents pursuant to this Order which are found by EPA to contain false information shall constitute a failure to comply with this Order and shall subject Respondent to penalties whether or not a responsible official of Respondent has certified the document.

XIX. SHIPMENT OF HAZARDOUS SUBSTANCES

- 19.1 Respondent shall, prior to any off-site shipment of hazardous substances from the Site to an out-of-state waste management facility, provide written notification to the appropriate state environmental official in the receiving state and to EPA's Project Coordinator of such shipment of hazardous substances. However, the notification to EPA of shipments shall not apply to any such off-site shipments when the total volume of all such shipments will not exceed ten (10) cubic yards. Notifications to States in those circumstances shall be governed by applicable state law.
- 19.2 The notification required by paragraph 19.1 shall be in writing, and shall include the following information, where available: (1) the name and location of the facility to which the hazardous substances are to be shipped; (2) the type and quantity of the hazardous substances to be shipped; (3) the expected schedule for the shipment of the hazardous substances; and (4) the method of transportation of the hazardous substances. Respondent shall notify the receiving state of major changes in the shipment plan, such as a decision to ship the hazardous substances to another facility within the same state, or to a facility in another state.
- 19.3 The identity of the receiving facility and state will be determined by Respondent unless disapproved by EPA. Respondent shall provide all relevant information, including information under the categories noted in paragraph 19.1 above, about the off-site shipments, as soon as practicable,

but no later than twenty-four (24) hours before the hazardous substances are actually shipped.

XX. NOTICE OF INTENT TO COMPLY

20. Respondent shall notify EPA's Project Coordinator within seven (7) business days after the effective date of this Order of Respondent's intention to comply with the terms of this Order. Failure of Respondent to provide notification to EPA's Project Coordinator of intent to comply within this time period shall be deemed a violation of this Order by Respondent.

XXI. OPPORTUNITY TO CONFER WITH EPA

21. Not later than five (5) business days from the effective date of this Order, Respondent may confer with EPA to discuss this Order. Such conference is not an adversarial hearing or part of a proceeding to challenge this Order, and no official stenographic record of such conference shall be kept.

XXII. ADMINISTRATIVE RECORD

22. The Administrative Record upon which this Order is issued is available for review by Respondent's representatives at Respondent's request. Requests to review the Administrative Record shall be submitted to the EPA Project Coordinator designated pursuant to Section IX of this Order.

XXIII. DEFINITIONS

- 23.1 "Business days" as used in this Order shall mean every day of the week except Saturdays, Sundays and federal holidays.
- 23.2 "Calendar Days" as used in this Order shall mean every day of the week, including Saturdays, Sundays and federal holidays.
- 23.3 "Work" as used in this Order shall mean all requirements of this Order, including any modifications hereto.

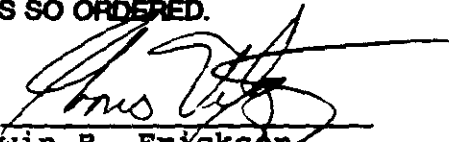
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23.4 All terms not defined herein shall have the meanings set forth in CERCLA and the NCP.

XXIV. TERMINATION AND SATISFACTION

24. The Respondent's obligations to EPA under this Order shall terminate and be deemed satisfied upon the Respondent's receipt of written notice from EPA that the Respondent has demonstrated, to the satisfaction of EPA, that all the terms of this Order have been satisfactorily completed.

IT IS SO ORDERED.

BY: 
Edwin B. Erickson
Regional Administrator
Region III
U.S. Environmental Protection
Agency

DATE: NOV 10 1992

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